

United States District Court  
Southern District of Texas  
FILED

APR 25 2001

Michael N. Milby  
Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

RAQUEL O. RODRIGUEZ  
AND JOSE L. RODRIGUEZ

VS.

RIDDELL SPORTS, INC.  
RIDDELL, INC.  
ALL AMERICAN SPORTS CORPORATION  
D/B/A RIDDELL/ALL AMERICAN  
AND CHRIS HOODMAN

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CIVIL ACTION NO. B-CV-96-177

DEFENDANTS, RIDDELL, INC. AND ALL AMERICAN SPORTS CORPORATION  
D/B/A RIDDELL/ALL AMERICAN'S MOTION FOR JUDGMENT ON PLEADINGS AND  
MEMORANDUM IN SUPPORT THEREOF WITH REGARD TO  
CONSCIOUS PAIN AND SUFFERING DAMAGES

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes All American Sports Corporation d/b/a Riddell/All American and files this its Motion for Judgment on the Pleadings pursuant to F.R.C.P. 12 (c) and moves the court to enter Judgment in its favor as Plaintiffs have failed to state a cause of action upon which they can recover and this party is entitled to judgment as a matter of law.

I.

Plaintiffs are suing Defendants for conscious pain and suffering

II.

The uncontroverted testimony via Dr. John Cassidy, M.D. with regard to conscious pain and suffering is as follows: SF 842/20 THROUGH 845/23

20 Q As part of your practice are you also called upon to

21 evaluate individuals as to whether you can determine whether



22 they are feeling pain or whether they are aware of what is  
23 happening?

24 A Yes, I am.

25 Q And in this particular case have you done so?

1 A Yes, I have.

2 Q And will you tell the jury and the Court again what you  
3 did in attempting to reach an opinion?

4 A Well, I asked Joe's brother, Juan, and his mom to come to  
5 Houston and bring Joe. I had --

6 THE COURT: You have examined Joe, then?

7 THE WITNESS: Yes, I have.

8 THE COURT: So the opinion that you gave us regarding  
9 expectation of life also entails the fact that you, yourself,  
10 examined him?

11 THE WITNESS: Yes, sir.

12 THE COURT: Go ahead.

13 BY MR. KAMITOMO:

14 Q Continue, please.

15 A They kindly brought him to Houston and I had an  
16 opportunity to examine him in my office in late January of  
17 this year and had an opportunity to look his body over and  
18 also asked his brother and his mom to have him respond to some  
19 of their commands or respond to pain.

20 I am not very exited about producing pain in human  
21 beings, particularly ones that are not my loved ones, and so I  
22 asked his mom and his brother to do that. And they were able  
23 to do that. And he clearly without question responded to  
24 pain, particularly when they tried to move his joints that are  
25 really stuck and would move his arm. And basically anything

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1 that moved stuff was very painful for him. His tube in his  
2 belly, for example, was painful. Turning his head to try to  
3 have it fit better in the wheelchair was also very painful.  
4 And he clearly was responding to pain.

5 Q So, doctor, even in his current vegetative state it is  
6 your opinion that he does feel and respond to pain?

7 A Oh, yes.

8 Q And there is no question about that in your mind?

9 A There is no question about that.

10 Q How about any awareness on Joe's part about what has  
11 happened to him. Has he got any cognition? Maybe you can  
12 explain to the jury what we have mean by cognition.

13 A Well, this is another one of those very difficult



14 issues. It is one that doctors talk a lot about and we don't  
 15 necessarily have all of the answers regarding them. But  
 16 based on that standard of reasonable medical probability,  
 17 studies that we have do have, lead us to believe that folks  
 18 with just as severe as Joe's do not have cognitive or thinking  
 19 ability anymore after that kind of an injury.

20 Q And in this particular case your opinion is that he does  
 21 not have that ability?

22 A Regrettably that is my opinion, yes.

23 THE COURT: So even though he does not know that he  
 24 is sick, if you excuse the word "sick," he does experience  
 25 pain?

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1 THE WITNESS: Yes, sir.

2 THE COURT: Just like, for example, when you talk  
 3 about pain, like we do?

4 THE WITNESS: Well, if pain can be -- is experienced  
 5 throughout the brain at different levels. And --

6 THE COURT: For example, if he were to get a shot --

7 THE WITNESS: Yes, sir.

8 THE COURT: -- would he -- would he feel that?

9 THE WITNESS: Yes, sir.

10 THE COURT: The same as we do?

11 THE WITNESS: I can't ever do the experiment to ask  
 12 him later on if he had, so I don't know. But clearly he  
 13 would respond as we do in jumping.

14 THE COURT: A movement ago you were making reference  
 15 to the fact that when they do therapy where they try to  
 16 straighten him out, we saw some of that in the film --

17 THE WITNESS: Yes, sir.

18 THE COURT: -- that would appear to hurt?

19 THE WITNESS: Oh, absolutely, yes, sir.

20 THE COURT: And even though he does not know that he  
 21 is sick?

22 THE WITNESS: And that has to do with which level of  
 23 the brain is responding to the pain, yes.

Since there is no evidence of conscious pain and suffering and mental anguish  
 Plaintiffs' claim fails as a matter of law entitling this defendant to Judgment on the  
 Pleadings.

WHEREFORE, PREMISES CONSIDERED, Riddell, Inc. and All American

Sports Corporation d/b/a Riddell/All American respectfully requests this Court grant their Motion for Judgment on Pleadings and that Plaintiffs take nothing against these parties for conscious pain and suffering and mental anguish and for such other and further relief, general, special, legal and equitable to which these parties may show themselves justly entitled.

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**



This is to certify that I had a conference with Plaintiffs' counsel, Rex Blackburn, and he refused to agree to this motion.

  
Robert Summers

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above was forwarded by telefax transmission and certified mail, return receipt requested to counsel of record on this the 25<sup>th</sup> day of April, 2001.

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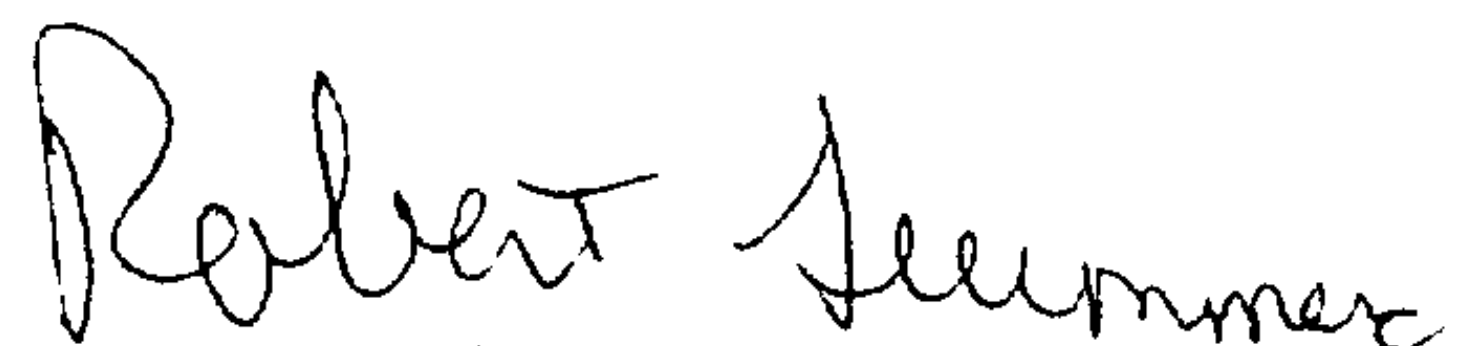
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